

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LA'SHAUN CLARK,

Plaintiff,

-v.-

NEW YORK CITY HOUSING AUTHORITY;
NEW YORK INSULATION &
ENVIRONMENTAL SERVICES, INC.; JLC
ENVIRONMENTAL CONSULTANTS, INC;
ROCKMILLS STEEL PRODUCTS CORP.,

Defendants.
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ORDER

20 Civ. 251 (PAE) (GWG)

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

Defendant New York City Housing Authority in its motion for judgment on the pleadings has argued that the doctrine of collateral estoppel does not permit plaintiff La'Shaun Clark to contest its contention that plaintiff was not exposed to asbestos while in her NYCHA apartment during the period she lived there. See Memorandum of Law in Support, filed May 7, 2020, at 6 (Docket # 40).

The Court has considered the parties' papers and wishes to make sure that plaintiff is aware that, in order to avoid the collateral estoppel bar (assuming it applies), she must present all evidence she has that she did not have a full and fair opportunity to litigate this issue in the prior proceeding.

Plaintiff makes some arguments on this point in her reply affirmation. One argument she appears to make is that she obtained new evidence after the state court's decision on May 9, 2019, that could not have been presented to that court. See Reply Affirmation, filed May 12, 2020, at 11 (Docket # 50). But her papers are unclear on this point.

Accordingly, the Court will give plaintiff one additional opportunity to address this issue. Plaintiff is directed to file with the Court, in the form of a sworn declaration, an explanation of any evidence she obtained after May 9, 2019, reflecting that she was exposed to asbestos while in her NYCHA apartment during the period she lived there. If she presents such evidence, she should also explain why she could not have obtained that evidence earlier for use in the case brought in the Bronx on behalf of her sons.

Plaintiff is also free to supplement her papers with respect to any other reason why she did not have a full and fair opportunity to litigate the issue of her exposure to asbestos in the Bronx court case.

Plaintiff shall file her supplemental submission by November 19, 2020. In light of the intervening Thanksgiving holiday, defendant may file any response by December 1, 2020.

So Ordered.

Dated: November 12, 2020
New York, New York


GABRIEL W. CORENSTEIN
United States Magistrate Judge